

D R A F T

SUMMARY

Imposes tax on wholesale sale of inhalant-form nicotine based on percentage of wholesale price.

Provides that person may not make wholesale sale of inhalant-form nicotine unless premises at which inhalant-form nicotine is received, stored or delivered is licensed. Establishes licensing program within Department of Revenue. Provides that licensing provisions become operative January 1, 2018.

Applies to inhalant-form nicotine sold after January 1, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to inhalant-form nicotine; prescribing an effective date; and pro-
3 viding for revenue raising that requires approval by a three-fifths major-
4 ity.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1. As used in sections 1 to 16 of this 2017 Act:**

7 (1) **“Consumer” means any person who purchases inhalant-form**
8 **nicotine in this state for the person’s use or consumption or for any**
9 **purpose other than reselling the inhalant-form nicotine to another**
10 **person.**

11 (2) **“Inhalant-form nicotine” means nicotine that:**

12 (a) **Is in a form that allows the nicotine to be delivered into a**
13 **person’s respiratory system;**

14 (b) **Is inhaled for the purpose of delivering the nicotine into a**
15 **person’s respiratory system; and**

16 (c)(A) **Is not approved by, or emitted by a device approved by, the**

1 **United States Food and Drug Administration for a therapeutic pur-**
2 **pose; or**

3 **(B) If approved by, or emitted by a device approved by, the United**
4 **States Food and Drug Administration for a therapeutic purpose, is not**
5 **marketed and sold solely for that purpose.**

6 **(3)(a) “Nicotine retailer” means any person that is engaged in the**
7 **business of selling or otherwise dispensing inhalant-form nicotine to**
8 **consumers.**

9 **(b) “Nicotine retailer” includes the operators of or recipients of**
10 **revenue from all places such as smoke shops, cigar stores and vending**
11 **machines, where inhalant-form nicotine is made or stored for ultimate**
12 **sale to consumers.**

13 **(4) “Nicotine wholesaler” means a person that purchases inhalant-**
14 **form nicotine in this state for resale to a person other than a con-**
15 **sumer.**

16 **(5) “Sale” means any transfer, exchange or barter, in any manner**
17 **or by any means, for a consideration, or a gift by a person engaged in**
18 **the business of selling inhalant-form nicotine, for advertising, as a**
19 **means of evading the provisions of sections 1 to 13 of this 2017 Act,**
20 **or for any other purpose.**

21 **(6) “Taxpayer” includes a nicotine wholesaler or other person re-**
22 **quired to collect a tax imposed under sections 1 to 13 of this 2017 Act.**

23 **(7) “Untaxed inhalant-form nicotine” means inhalant-form nicotine**
24 **for which the tax required under sections 1 to 13 of this 2017 Act has**
25 **not been paid.**

26 **(8) “Wholesale price” means the price paid for untaxed inhalant-**
27 **form nicotine at the point of first sale in this state.**

28 **SECTION 2. (1) A tax is hereby imposed upon the wholesale sale of**
29 **inhalant-form nicotine in this state. The tax shall be collected:**

30 **(a) By a nicotine wholesaler at the time at which the wholesale sale**
31 **occurs.**

1 (b) Upon the sale of inhalant-form nicotine to a consumer, if the
2 sale is the first sale of the inhalant-form nicotine in this state.

3 (2) The tax imposed under this section shall be imposed at the rate
4 of:

5 (a) Ninety-five percent of wholesale price of inhalant-form nicotine
6 that is sold separately from an inhalant delivery system or sold in a
7 disposable cartridge used in an inhalant delivery system.

8 (b) Ninety-five percent of the wholesale price of an inhalant delivery
9 system that is sold containing inhalant-form nicotine and does not
10 require any additional components for use.

11 (3) A tax under this section is not imposed on an inhalant delivery
12 system that when sold does not contain inhalant-form nicotine.

13 (4) If the tax imposed under this section does not equal an amount
14 calculable to a whole cent, the tax shall be equal to the next higher
15 whole cent.

16 (5) Except as otherwise provided by the Department of Revenue by
17 rule, the amount of the tax shall be separately stated on an invoice,
18 receipt or other similar document that the nicotine wholesaler pro-
19 vides to the purchaser at the time at which the wholesale sale occurs.

20 (6) A person may not knowingly sell, purchase, install, transfer or
21 possess electronic devices or software programs for the purposes of:

22 (a) Hiding or removing records of wholesale sales of inhalant-form
23 nicotine; or

24 (b) Falsifying records of wholesale sales of inhalant-form nicotine.

25 SECTION 3. (1) Except as otherwise provided in sections 1 to 13 of
26 this 2017 Act, the tax imposed under section 2 of this 2017 Act shall
27 be collected and remitted by each nicotine wholesaler that engages in
28 the wholesale sale of inhalant-form nicotine. The tax is a tax upon the
29 nicotine wholesaler that is required to collect the tax, and the nicotine
30 wholesaler is a taxpayer.

31 (2) The nicotine wholesaler shall file a return with the Department

1 of Revenue on or before the last day of January, April, July and Oc-
2 tober of each year for the previous calendar quarter.

3 (3) The nicotine wholesaler shall pay the tax to the department in
4 the form and manner prescribed by the department, but not later than
5 with each quarterly return, without regard to an extension granted
6 under subsection (5) of this section.

7 (4) Nicotine wholesalers shall file the returns required under this
8 section regardless of whether any tax is owed.

9 (5) For good cause, the department may extend the time for filing
10 a return under this section. The extension may be granted at any time
11 if a written request is filed with the department during or prior to the
12 period for which the extension may be granted. The department may
13 not grant an extension of more than 30 days.

14 (6) Interest shall be added at the rate established under ORS 305.220
15 for each month, or fraction of a month, from the time the return was
16 originally required to be filed to the time of payment.

17 (7) If a nicotine wholesaler fails to file a return or pay the tax as
18 required by this section, the department shall impose a penalty in the
19 manner provided in ORS 314.400.

20 (8) Except as provided in subsections (9) and (10) of this section, the
21 period prescribed for the department to allow or make a refund of any
22 overpayment of tax paid under sections 1 to 13 of this 2017 Act is as
23 provided in ORS 314.415.

24 (9)(a) The department shall first apply any overpayment of tax by
25 a nicotine wholesaler to any tax imposed under sections 1 to 13 of this
26 2017 Act that is owed by the nicotine wholesaler.

27 (b) If after any offset against any delinquent amount the overpay-
28 ment of tax remains greater than \$1,000, the remaining refund shall
29 be applied as a credit against the next subsequent calendar quarter as
30 an estimated payment.

31 (10) The department may not make a refund of, or credit, any

1 overpayment of tax under sections 1 to 13 of this 2017 Act that was
2 credited to the account of a nicotine wholesaler under subsection (9)(b)
3 of this section if the return for that tax period is not filed within three
4 years after the due date of that return.

5 **SECTION 4.** (1) Every person who collects any amount under sec-
6 tion 3 of this 2017 Act shall hold the same in trust for the State of
7 Oregon and for the payment thereof to the Department of Revenue in
8 the manner and at the time provided in section 3 of this 2017 Act.

9 (2) At any time a nicotine wholesaler fails to remit any amount
10 collected, the department may enforce collection by the issuance of a
11 distraint warrant for the collection of the delinquent amount and all
12 penalties, interest and collection charges accrued thereon. The war-
13 rant shall be issued, recorded and proceeded upon in the same manner
14 and shall have the same force and effect as is prescribed with respect
15 to warrants for the collection of delinquent income taxes.

16 (3)(a) In the case of a nicotine wholesaler that is assessed pursuant
17 to the provisions of ORS 305.265 (12) and 314.407 (1), the department
18 may issue a notice of liability to any officer, employee or member of
19 the nicotine wholesaler within three years from the time of assess-
20 ment. Within 30 days from the date the notice of liability is mailed to
21 the officer, employee or member, the officer, employee or member
22 shall pay the assessment, plus penalties and interest, or advise the
23 department in writing of objections to the liability and, if desired, re-
24 quest a conference. A conference shall be governed by the provisions
25 of ORS 305.265 pertaining to a conference requested from a notice of
26 deficiency.

27 (b) After a conference or, if no conference is requested, a determi-
28 nation of the issues considering the written objections, the department
29 shall mail the officer, employee or member a conference letter af-
30 firming, canceling or adjusting the notice of liability. Within 90 days
31 from the date the conference letter is mailed to the officer, employee

1 or member, the officer, employee or member shall pay the assessment,
2 plus penalties and interest, or appeal to the Oregon Tax Court in the
3 manner provided for an appeal from a notice of assessment.

4 (c) If the department does not receive payment or written objection
5 to the notice of liability within 30 days after the notice of liability was
6 mailed, the notice of liability becomes final. In that event, the officer,
7 employee or member may appeal the notice of liability to the tax court
8 within 90 days after it became final in the manner provided for an
9 appeal from a notice of assessment.

10 (4)(a) In the case of a failure to file a return on the due date, gov-
11 erned by the provisions of ORS 305.265 (10) and 314.400, the department,
12 in addition to any action described in the provisions of ORS 305.265 (10)
13 and 314.400, may send notices of determination and assessment to any
14 officer, employee or member any time within three years after the
15 assessment. The time of assessment against the officer, employee or
16 member is 30 days after the date the notice of determination and as-
17 sessment is mailed. Within 30 days from the date the notice of deter-
18 mination and assessment is mailed to the officer, employee or
19 member, the officer, employee or member shall pay the assessment,
20 plus penalties and interest, or advise the department in writing of ob-
21 jections to the assessment and, if desired, request a conference. A
22 conference shall be governed by the provisions of ORS 305.265 per-
23 taining to a conference requested from a notice of deficiency.

24 (b) After a conference or, if no conference is requested, a determi-
25 nation of the issues considering the written objections, the department
26 shall mail the officer, employee or member a conference letter af-
27 firming, canceling or adjusting the notice of determination and as-
28 sessment. Within 90 days from the date the conference letter is mailed
29 to the officer, employee or member, the officer, employee or member
30 shall pay the assessment, plus penalties and interest, or appeal in the
31 manner provided for an appeal from a notice of assessment.

1 (c) If the department does not receive payment or written objection
2 to the notice of determination and assessment within 30 days after the
3 notice of determination and assessment was mailed, the notice of de-
4 termination and assessment becomes final. In that event, the officer,
5 employee or member may appeal the notice of determination and as-
6 sessment to the tax court within 90 days after it became final in the
7 manner provided for an appeal from a notice of assessment.

8 (5)(a) More than one officer or employee of a corporation may be
9 held jointly and severally liable for payment of taxes.

10 (b) Notwithstanding the confidentiality provisions of section 11 of
11 this 2017 Act, if more than one officer or employee of a corporation
12 may be held jointly and severally liable for payment of taxes, the de-
13 partment may require any or all of the officers, members or employees
14 who may be held liable to appear before the department for a joint
15 determination of liability. The department shall notify each officer,
16 member or employee of the time and place set for the determination
17 of liability.

18 (c) Each person notified of a joint determination under this sub-
19 section shall appear and present such information as is necessary to
20 establish that person's liability or nonliability for payment of taxes to
21 the department. If a person who was notified fails to appear, the de-
22 partment shall make its determination on the basis of all the infor-
23 mation and evidence presented. The department's determination is
24 binding on all persons notified and required to appear under this sub-
25 section.

26 (d)(A) If an appeal is taken to the tax court pursuant to section 11
27 of this 2017 Act by any person determined to be liable for unpaid taxes
28 under this subsection, each person required to appear before the de-
29 partment under this subsection shall be impleaded by the plaintiff. The
30 department may implead any officer, employee or member who may
31 be held jointly and severally liable for the payment of taxes. Each

1 person impleaded under this paragraph shall be made a party to the
2 action before the tax court and shall make available to the tax court
3 the information that was presented before the department, as well as
4 other information that may be presented to the tax court.

5 (B) The tax court may determine that one or more persons
6 impleaded under this paragraph are liable for unpaid taxes without
7 regard to any earlier determination by the department that an
8 impleaded person was not liable for unpaid taxes.

9 (C) If a person required to appear before the tax court under this
10 subsection fails or refuses to appear or bring such information in part
11 or in whole, or is outside the jurisdiction of the tax court, the tax
12 court shall make its determination on the basis of all the evidence
13 introduced. Notwithstanding section 11 of this 2017 Act, the evidence
14 constitutes a public record and shall be available to the parties and the
15 tax court. The determination of the tax court is binding on all persons
16 made parties to the action under this subsection.

17 (e) This section may not be construed to preclude a determination
18 by the department or the tax court that more than one officer, em-
19 ployee or member is jointly and severally liable for unpaid taxes.

20 SECTION 5. (1) A nicotine wholesaler shall keep receipts, invoices
21 and other pertinent records related to wholesale sales of inhalant-form
22 nicotine in the form required by the Department of Revenue. Each
23 record shall be preserved for five years from the time to which the
24 record relates, or for as long as the nicotine wholesaler retains the
25 inhalant-form nicotine to which the record relates, whichever is later.
26 During the retention period and at any time prior to the destruction
27 of records, the department may give written notice to the nicotine
28 wholesaler not to destroy records described in the notice without
29 written permission of the department. Notwithstanding any other
30 provision of law, the department shall preserve reports and returns
31 filed with the department for at least five years.

1 **(2) The department or its authorized representative, upon oral or**
2 **written demand, may make examinations of the books, papers, records**
3 **and equipment of persons making wholesale sales of inhalant-form**
4 **nicotine and any other investigations the department deems necessary**
5 **to carry out the provisions of sections 1 to 13 of this 2017 Act.**

6 **SECTION 6.** **(1) The Department of Revenue has authority, by order**
7 **or subpoena to be served with the same force and effect and in the**
8 **same manner as a subpoena is served in a civil action in the circuit**
9 **court, or the Oregon Tax Court, to require the production at any time**
10 **and place the department designates of any books, papers, accounts**
11 **or other information necessary to carry out sections 1 to 13 of this 2017**
12 **Act. The department may require the attendance of any person having**
13 **knowledge in the premises, and may take testimony and require proof**
14 **material for the information, with power to administer oaths to the**
15 **person.**

16 **(2) If a person fails to comply with a subpoena or order of the de-**
17 **partment or to produce or permit the examination or inspection of any**
18 **books, papers, records and equipment pertinent to an investigation or**
19 **inquiry under sections 1 to 13 of this 2017 Act, or to testify to any**
20 **matter regarding which the person is lawfully interrogated, the de-**
21 **partment may apply to the Oregon Tax Court or to the circuit court**
22 **of the county in which the person resides or where the person is for**
23 **an order to the person to attend and testify, or otherwise to comply**
24 **with the demand or request of the department. The department shall**
25 **apply to the court by ex parte motion, upon which the court shall**
26 **make an order requiring the person against whom the motion is di-**
27 **rected to comply with the request or demand of the department within**
28 **10 days after the service of the order, or within the additional time**
29 **granted by the court, or to justify the failure within that time. The**
30 **order shall be served upon the person to whom it is directed in the**
31 **manner required by this state for service of process, which service is**

1 required to confer jurisdiction upon the court. Failure to obey any
2 order issued by the court under this section is contempt of court. The
3 remedy provided by this section is in addition to other remedies, civil
4 or criminal, existing under the tax laws or other laws of this state.

5 **SECTION 7.** Notwithstanding the confidentiality provisions of sec-
6 tion 11 of this 2017 Act, the Department of Revenue may disclose in-
7 formation received under sections 1 to 13 of this 2017 Act to the Oregon
8 Health Authority to carry out the provisions of ORS 431A.175, 431A.183
9 and 433.835 to 433.875.

10 **SECTION 8.** Except as otherwise provided in sections 1 to 13 of this
11 2017 Act, a person aggrieved by an act or determination of the De-
12 partment of Revenue or its authorized agent under sections 1 to 13 of
13 this 2017 Act may appeal, within 90 days after the act or determi-
14 nation, to the Oregon Tax Court in the manner provided in ORS 305.404
15 to 305.560. These appeal rights are the exclusive remedy available to
16 determine the person's liability for the tax imposed under sections 1
17 to 13 of this 2017 Act.

18 **SECTION 9.** (1)(a) When an amount represented by a nicotine
19 wholesaler to a nicotine retailer as constituting the tax imposed under
20 sections 1 to 13 of this 2017 Act is computed upon an amount that is
21 not taxable or is in excess of the taxable amount and is actually paid
22 by the nicotine retailer to the nicotine wholesaler, the excess tax paid
23 shall be returned by the nicotine wholesaler to the nicotine retailer
24 upon written notification by the Department of Revenue or the
25 nicotine retailer.

26 (b) The written notification must contain information necessary to
27 determine the validity of the nicotine retailer's claim.

28 (2) If the nicotine wholesaler does not return the excess tax within
29 60 days after mailing of the written notification required under sub-
30 section (1) of this section, the nicotine retailer may appeal to the de-
31 partment for a refund of the amount of the excess tax, in the manner

1 and within the time allowed under rules adopted by the department.

2 (3) If excess tax is returned to the nicotine retailer by the depart-
3 ment, the department may issue a notice of deficiency for the excess
4 tax to the nicotine wholesaler in the manner provided under ORS
5 305.265.

6 SECTION 10. The Department of Revenue shall administer and en-
7 force sections 1 to 13 of this 2017 Act. The department is authorized
8 to establish rules and procedures for the implementation and enforce-
9 ment of sections 1 to 13 of this 2017 Act that are consistent with
10 sections 1 to 13 of this 2017 Act.

11 SECTION 11. Except as otherwise provided in sections 1 to 13 of this
12 2017 Act or where the context requires otherwise, the provisions of
13 ORS chapters 305 and 314 as to the audit and examination of returns,
14 periods of limitation, determination of and notices of deficiencies, as-
15 sessments, collections, liens, delinquencies, claims for refund and re-
16 funds, conferences, appeals to the Oregon Tax Court, stays of
17 collection pending appeal, confidentiality of returns and the penalties
18 relative thereto, and the procedures relating thereto, apply to the de-
19 terminations of taxes, penalties and interest under sections 1 to 13 of
20 this 2017 Act.

21 SECTION 12. If the Department of Revenue believes that the col-
22 lection of any tax imposed under sections 1 to 13 of this 2017 Act or
23 any amount of the tax required to be paid to the state or of any de-
24 termination will be jeopardized by delay, the department shall make
25 a determination of the tax or amount of tax required to be collected,
26 noting that fact upon the determination. The amount determined is
27 immediately due and payable, and the department shall assess the
28 taxes, notify the person and proceed to collect the tax in the same
29 manner and using the same procedures as for the collection of income
30 taxes under ORS 314.440.

31 SECTION 13. (1) All moneys received by the Department of Revenue

1 under sections 1 to 13 of this 2017 Act shall be deposited in the State
2 Treasury and credited to a suspense account established under ORS
3 293.445. The department may pay expenses for the administration and
4 enforcement of sections 1 to 13 of this 2017 Act out of moneys received
5 from the tax imposed under section 2 of this 2017 Act. Amounts nec-
6 essary to pay administrative and enforcement expenses are contin-
7 uously appropriated to the department from the suspense account.

8 (2) After the payment of administrative and enforcement expenses
9 and refunds or credits arising from erroneous overpayments, the de-
10 partment shall credit the balance of the moneys received by the de-
11 partment under this section to the General Fund.

12 SECTION 14. (1) The wholesale sale of inhalant-form nicotine in
13 this state is subject to regulation by the Department of Revenue.

14 (2) A nicotine wholesaler must have a wholesale license issued by
15 the department for the premises at which inhalant-form nicotine is
16 received, stored or delivered. To hold a wholesale license under this
17 section, a nicotine wholesaler:

18 (a) Must apply for a license in the manner described in section 15
19 of this 2017 Act;

20 (b) Must provide proof that the applicant is 21 years of age or older;

21 (c) May not be located in an area that is zoned exclusively for res-
22 idential use; and

23 (d) Must meet the requirements of any rule adopted by the depart-
24 ment under subsection (3) of this section.

25 (3) The department shall adopt rules that:

26 (a) Require a nicotine wholesaler to annually renew a license issued
27 under this section;

28 (b) Establish application, licensure and renewal of licensure fees for
29 nicotine wholesalers;

30 (c) Require inhalant-form nicotine received, stored or delivered by
31 a nicotine wholesaler to be tested; and

1 (d) Require a nicotine wholesaler to meet any public health and
2 safety standards and industry best practices established by the de-
3 partment by rule.

4 (4) Fees adopted under subsection (3)(b) of this section:

5 (a) May not exceed the cost of administering this section and sec-
6 tion 15 of this 2017 Act; and

7 (b) Shall be deposited in the Tobacco Use Reduction Account es-
8 tablished under ORS 431A.153.

9 **SECTION 15.** (1) An applicant for a license or renewal of a license
10 under this section and section 14 of this 2017 Act shall apply to the
11 Department of Revenue in the form required by the department,
12 showing the name and address of the applicant, location of the prem-
13 ises that is to be operated under the license and other pertinent in-
14 formation required by the department. The department may not grant
15 or renew a license until the applicant has complied with the provisions
16 of this section and section 14 of this 2017 Act and the rules of the de-
17 partment.

18 (2) The department may reject any application that is not submitted
19 in the form required by rule. The department shall give applicants an
20 opportunity to be heard if an application is rejected. A hearing under
21 this subsection is not subject to the requirements for contested case
22 proceedings under ORS chapter 183.

23 (3) Except as provided in subsection (2) of this section, a revocation
24 of, or a refusal to issue or renew, a license under this section and
25 section 14 of this 2017 Act is subject to the requirements for contested
26 case proceedings under ORS chapter 183.

27 **SECTION 16.** (1) A sales invoice for the wholesale sale of inhalant-
28 form nicotine in this state shall contain the following:

29 (a) The name and address of the seller, the name and address of the
30 purchaser, the date of the sale of inhalant-form nicotine, the quantity
31 and product description of inhalant-form nicotine, the price paid for

1 **inhalant-form nicotine and any discount applied in determining the**
2 **price paid for inhalant-form nicotine;**

3 **(b) The applicable license identification number for the nicotine**
4 **wholesaler;**

5 **(c) A certified statement by the nicotine wholesaler that all taxes**
6 **due under sections 1 to 13 of this 2017 Act have been or will be paid;**
7 **and**

8 **(d) Any other information the Department of Revenue may pre-**
9 **scribe by rule.**

10 **(2) A nicotine wholesaler must provide a copy of the sales invoice**
11 **to the purchaser of the inhalant-form nicotine and the purchaser shall**
12 **retain a copy of the invoice for five years following the date of pur-**
13 **chase.**

14 **(3) Each purchaser that then sells the inhalant-form nicotine to a**
15 **subsequent purchaser shall provide the subsequent purchaser with a**
16 **sales invoice that meets the requirements of this section.**

17 **(4)(a) A purchaser in possession of inhalant-form nicotine that is**
18 **unable to present a sales invoice that meets the requirements of this**
19 **section is presumed to be in possession of inhalant-form nicotine for**
20 **which the tax imposed under sections 1 to 13 of this 2017 Act has not**
21 **been paid.**

22 **(b) In the case of a purchaser in possession of untaxed inhalant-**
23 **form nicotine, the tax is due immediately, along with a penalty equal**
24 **to 100 percent of the tax due. Amounts due under this paragraph may**
25 **be collected as provided in section 12 of this 2017 Act.**

26 **(c) If the purchaser in possession of untaxed inhalant-form nicotine**
27 **is a nicotine retailer, the Department of Revenue may impose a civil**
28 **penalty for the possession of untaxed inhalant-form nicotine. A civil**
29 **penalty imposed under this paragraph may not exceed \$1,000 per vio-**
30 **lation. A civil penalty imposed under this paragraph may be appealed**
31 **to the magistrate division of the tax court in the time and manner**

1 **prescribed in ORS 305.404 to 305.560.**

2 **SECTION 17. Sections 1 to 16 of this 2017 Act apply to inhalant-form**
3 **nicotine sold on or after January 1, 2018.**

4 **SECTION 18. (1) Sections 14 and 15 of this 2017 Act become opera-**
5 **tive on January 1, 2018.**

6 **(2) The Department of Revenue may take any action before the**
7 **operative date specified in subsection (1) of this section that is neces-**
8 **sary to enable the department to exercise, on and after the operative**
9 **date specified in subsection (1) of this section, all the duties, functions**
10 **and powers conferred on the department by sections 14 and 15 of this**
11 **2017 Act.**

12 **SECTION 19. This 2017 Act takes effect on the 91st day after the**
13 **date on which the 2017 regular session of the Seventy-ninth Legislative**
14 **Assembly adjourns sine die.**

15
